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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. ST/530 /2007 - CU[DB] Date 16/03/2009

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

To :
M/S CAIITJEE(CATJEE)
B-38/46,RAMAN NIWAS, VARANASI-221010

M/S CAIITJEE(CATJEE) Appellant

Vs

C.C.E ALLAHABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No. ST/98 2009 CU[DB]** dated

passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent

   C.C.E ALLAHABAD

   38,M.G.MARG, CIVIL LINES, ALLAHABAD
2. Adv. / Consult : Sh. Manoj Kumar Pandey, CA
   2nd Floor, D-59/71B Near Laxmi Cinema
   Mahmoorganj, Varanasi (UP)

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-15
15 Office Copy
16 Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Service Tax Appeal No. 530 of 2007

[Arising out of Order-in-Appeal No. 20/ST/ALL/2007 dated 24.5.2007 passed by Commissioner (Appeals) Customs & Central Excise, Allhabad]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K.Das, Member (Judicial)

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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 should 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? : Seen

4. Whether Order is to be circulated to the Departmental authorities? : Yes

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M/s. CAIIT JEE (CAT JEE) Appellant

Vs.

Commissioner of Central Excise Allahabad Respondent

Appearance:

Mr. Manoj Pandey, Chartered Accountant for the Appellant
Mr. Sushil Kumar, JDR for the Respondent

CORAM:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K.Das, Member (Judicial)

Date of Hearing /Decision: 3.3.2009

Final **ORDER NO. 57/98/09**

Per M. Veeraiyan (for the Bench):

This is an appeal against the order of the Commissioner (Appeals) No. 20/ST/ALL/2007 dated 24.5.07 by which demand of service tax on amounts collected by the appellants prior to 1.7.03 for the services rendered on or after 1.7.03 (when service tax was introduced on the commercial training and coaching service) was upheld by the Commissioner (Appeals) and also the penalty imposed was sustained.

2. The learned Chartered Accountant appearing for the appellant submits that the demand relates to the period from 1.4.03 to 31.3.04 and the show cause notice has been issued on 21.3.06 and, therefore, the entire demand is time barred.

3. Learned DR submits that the taxability of service tax in respect of amounts received prior to 1.7.03 when services are actually rendered on or after 1.7.03 has been decided in favour of the Department in the case of CCE, Allahabad vs. M/s. Krishna Coaching Institute reported in 2008-TIOL- 2034-CESTAT- Del.

4. We have carefully considered the submissions from both the sides. The issue relating to levy of service tax has been decided in favour of the Department and at the same time the invocation of extended period for demand of duty has not been sustained in the case of Krishna Coaching

Institute cited supra. The relevant portion of the order is reproduced below:-

"6.1 We have carefully considered the submissions from both sides and perused the changes in the provisions of the Act and the Rules. Section 66 is the charging section. The liability to tax in this case was crystallised by insertion of section 65(105)(zzc) in the list of services chargeable to tax which was with effect from 1-7-2003. There is no dispute about the nature of service to sought to be taxed, the person liable to pay, or the rate of tax payable.

6.2 At this juncture, it may be appropriate to consider taxable event relating to other indirect taxes. Under the Central Excise law the liability arises as soon as the goods are manufactured but the payment is postponed to later date based on the date/ month in which the excisable goods are removed. Whether the removal is on sale and if so the date of payment of sale consideration are not relevant to determine liability to duty.

Under the Customs Law, the liability to import duty arises as soon as import is complete. In the case of import by sea, the liability is fastened as soon as the vessel enters territorial waters of India. The date of payment could be before the arrival of the vessel or after arrival before clearance from the port or cleared to warehouse under bond , then, at the time of clearance from the warehouse. The payment of Customs duty is not linked to payment of sale consideration to the exporter for the consignment imported.

6.3 However, in respect of service tax, the actual date of payment of the tax is linked with the date of receipt of payment of charges for the services. This is done as a matter of concession by way of postponing the payment and rationale is to not to burden the provider of service to pay the tax from his packet even before receipt from the service recipients. The Department has no role in deciding the date of payment of charges for the services and the arrangement in this regard is flexible as decided between the provider and receiver of the services. Due date for payment of tax may change but will not extinguish the liability to tax. A person who collects the charges in advance can not be allowed a more disadvantageous position compared to a person who collects later. The provision relating to pay later with a view to mitigate the difficulties of service provider can not be allowed to be taken advantage of by a person who receives payment in advance.

6.4 In the present case, payment was received in advance for the services yet to be rendered; and services were rendered later when service tax was attracted. The bill if any prepared was for services yet to be rendered. The date of preparation of the bill or the date of receipt can not be considered as date of rendering service.

6.5 Amendments to Section 65(105) defining taxable service and Section 67 providing for valuation of taxable service was carried out by Finance Act 2005 to include 'services to be provided' and thus enlarging the term taxable service to include the services 'to be provided'. These amendments provides for collection of service even before rendering the service on the ground advance payments have been received before rendering the services. If the service provider received the payments ,say in august 2003, for a course to be conducted in December 2003, then he could not have been made to pay the service tax in September 2003 itself before the above said amendments by Finance Act 2005 enlarging the term taxable service to include the services 'to be provided'. After the amendments this is permissible.

6.6 The findings of the Commissioner (Appeals) that since the value has been received prior to levy of service tax on such service, though the service has been provided after levy of service tax, no service tax is leviable is erroneous. The respondent has no vested right to collect in advance the fees for conducting the training programme to be conducted after 1.7.2003. The main obligation to pay tax arises out of Finance Act, 2003 and the service has been brought into tax nets by Notification No. 7/2003-ST dated 20.6.03 with effect from 1.7.03.This main obligation cannot be altered by subsidiary obligation like taking registration as an assessee, issuing invoices, filing returns etc. Even if the amount is collected in advance, it is not impracticable to raise an invoice indicating the service charges (noting that the amount already stands paid) and indicating service tax payable.

6.7 As the services have been actually rendered prior to 1.7.03, the payment received earlier does not make it as service charges attributable to services rendered prior to 1.7.03. Therefore, service tax is payable. To that extent the order of the Commissioner (Appeals) is erroneous.

7. However, the Commissioner' (Appeals) finding that nondisclosure of value received before 1.7.03 against coaching services was due to bona fide interpretation Act/Rules and cannot be considered as suppression does not need interference."

5. In the present case, we find that the show cause notice has been issued after the period of one year and therefore the entire demand is time barred. Therefore, we allow the appeal on the issue of limitation with consequential relief.

(Dictated & Pronounced in the open Court)

(M. Veeraiyan)
Member(Technical)

(P.K.Das)
Member(Judicial)

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