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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/550 /2008 – SM[BR] Date 20/05/2009

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

To :
C.C.E. RAIPUR

CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR 492001.

C.C.E. RAIPUR Appellant

Vs

M/S B.S.B.K. PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 427 / 2009 –SM[BR] dated 20.3.2009 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

   M/S B.S.B.K. PVT. LTD.

   B.S.B.K.HOUSE, NANDINI ROAD BHILAI,DISTT. DURG. (C.G.)

2. Adv. / Consult SHRI SANJAY GROVER ADV.
   E-500 GRATER KAILASH-II
   NEW DELHI

3 S.D.R
~~4 J.C.D.R.~~
5 Bar association. CESTAT. New Delhi
6 Director Publications. Customs. Excise. I.P. Estate. New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
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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 DELHI

COURT – III

SERVICE TAX APPEAL NO. 550 OF 2008-SM

[Arising out of Order-in-Appeal No. 11-ST/RPR-II/2008 dated 09.04.2008 passed by the Commissioner (Appeals), Customs & Central Excise, Raipur]

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?	No
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 Departmental authorities?	Yes

CCE, Raipur — Appellant

Vs.

M/s. B.S.B.K. Pvt. Limited — Respondent

Appearance:

Shri M.M. Singh, D.R. for the Revenue;
Shri Sanjay Grover, Advocate for the respondent

Coram:

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

Date of hearing/decision: 20th March, 2009

FINAL ORDER NO. 427/09-SM(BR) **dated** 20.3.09

Per P.K. Das:

Revenue filed this appeal against Order-in-Appeal No. 11-ST/RPR-II/2008 dated 9.4.2008 passed by the Commissioner (Appeals), Raipur.

2. The relevant facts of the case, in brief, are that the respondents are engaged in providing taxable service of Industrial Construction. It has been alleged that the respondents availed credit on mobile phone during the period up to 31st March, 2006. Scrutiny of the bills of mobile phones revealed that the mobile phone bills were not issued in the name of the respondent company. It has further been alleged that the bills were issued in the name of staff and employees of the respondent company and, therefore, the respondents is not eligible to take the credit. The original authority disallowed the credit of Rs. 57,117/- and imposed penalty of Rs. 2,000/-. The Commissioner (Appeals) set aside the impugned order. Hence, the Revenue filed this appeals.

3. Learned SDR, on behalf of the Revenue, submits that in terms of Rule 2(l) of CENVAT Credit Rules, 2004 credit would be eligible for the services used in relation to the business activities. He submits that in the present case, the employees of the respondent company used the mobile phone for individual purposes and, therefore, the respondent company is

not eligible for credit. He further submits that mere payment of bills by the respondent company do not imply that the services have been utilized by the respondent company. He also submits that the respondents failed to establish that the services rendered by the employees were utilized in relation to the business activities.

4. Learned Advocate on behalf of the respondents reiterates the findings of the Commissioner (Appeals). He submits that the respondents submitted the statement of payment of bills. He further submits that there is a categorical averment on behalf of the respondents that mobile phones were used in relation to the business activities which was not refuted in the grounds of appeal filed by the Revenue. He relied upon the decision of the Hon'ble Gujarat High Court in the case of CCE vs. Excel Crop Care Ltd., reported in 2008 (12) STR 436 (Guj.). He also relied upon the decision of the Tribunal in the case of Wiptech Peripherals Pvt. Ltd. vs. CCE, Rajkot, reported in 2008 (12) STR 716 (Tri.-Ahmd.). He also submits that the demand of tax is clearly barred by limitation.

5. After hearing both sides and on perusal of the records, it is seen from the impugned order that mobile phones were used by the full time directors of the respondent company. It is also seen that the respondents produced the bank statement showing payment of the bills of the respondent company. Hon'ble Gujarat High Court in the case of Excel Crop Care Ltd. (supra) has held that mobile phones were provided by the

employer. There is nothing on record to indicate that the activities carried out by such staff were not relatable to business activities by the respondents. The Tribunal in the case of Wiptech Peripherals Pvt. Ltd. (supra) remanded the matter to the original authority for verifying whether cell-phones in name of individuals used for attending calls of customers. In the present case the respondents made a categorical statement that mobile phones were used by the whole time directors of the respondent company in relation to the business activities which were not refuted by the Revenue in the grounds of appeal by any evidence. Therefore, the submission of the learned D.R. is not sustainable.

6. I agree with the submission of the learned D.R. that mere payment of bills by the respondents does not imply that the services have been utilized by the respondent company for business activities. But in the present case, it is seen that the respondent took opposite stand that the mobile phones were utilized by the full time directors of the respondent company for business purposes which were not negated by the Revenue by any material. In view of the above discussion, I find no reason to interfere with the order of the Commissioner (Appeals). Accordingly, appeal filed by the Revenue is rejected.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK