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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/84 /2008 – SM[BR] Date 07/10/2009

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

To :
M/S CONVOY SECURITY PVT. LTD.
AC-4, JAWAHAR TOWE,DEVI MARG, BANI PARK,
JAIPUR.

M/S CONVOY SECURITY PVT. LTD. Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1200 / 2009 –SM[BR] dated 16.9.2009

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
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
MR.BIPIN GARG
B-1/1289,A-VASANT KUNJ, 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)
16 Office Copy
17 Guard file

Assistant Registrar
(SM Appeal Branch)

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

Service Tax Appeal No. 84 of 2008-SM(BR)

[Arising out of Order-in-Appeal No. 151/GRM/ST/JPR-I/2006 dated 27.8.2007 passed by Commissioner (Appeals), Central Excise, Jaipur I]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

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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? : Yes
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
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. Convoy Security Pvt. Ltd. — Appellants

Vs.

Commissioner of Central Excise Jaipur — Respondent

Appearance:

Shri Atul Gupta, Company Secretary for the Appellant
Shri S.Gautam, SDR for the Respondent

Date of Hearing/decision : 16.9.2009

ORAL ORDER NO. 1200/2009 SM (BR)

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No. 151/GRM/ST/JPR-I/2006 dated 27.8.06 by which the order of the original authority dated 16.10.06 demanding service tax of Rs. 55,024/- along with interest and imposing penalty at Rs. 100/- per day under section 76, penalty of Rs.1000/- under section 77 and penalty of Rs.55,024/- under section 78 has been upheld.

2. Learned Company Secretary submits that they are not disputing the service tax demanded. However, they are seeking waiver of penalty imposed under section 77 and section 78. He submits that the demand of service tax has been confirmed on the basis of figures furnished in the income tax returns. The accounting norms of the income tax are not identical to the accounting norms under the service tax where the tax is payable only on actual receipt of service charges. There is, at the most, a clerical mistake in the accounting. There is no mensrea and, in fact, no statement has been taken and no evidence of wilful suppression or mis-statement has been relied upon. The learned Company Secretary also relies on the decision of the Tribunal in the case of Bajaj Travels Ltd. Appeal No. ST/440/2006 and appeal No. ST/111/2006 vide Final Order No. ST/198-199/09 dated 19.6.09, wherein in analogues situation the penalty under section 78 was reduced to 25% of the Service Tax demand.

3. Learned SDR submits that there is vide variation between the figures furnished under income tax return for the year 2003-2004 which is Rs.17,03,277/- is against the service ~~tax~~ charges as per return under service tax return which was Rs.14,76,229.25. Since the duty under service tax demand has not been disputed, it is a clear case of mis-declaration of the turnover for the purpose of service tax and the penalties imposed by the original authority and upheld by the Commissioner (Appeals) are justified. The learned SDR relies on the decision of the Tribunal in the case of Real Mathematic Classes vs. CCE, Jaipur reported in [2008 (86) RLT 107] wherein it has been held that when there is no reasonable cause for failure to pay service tax in time, section 80 of the Act cannot be applied and leniency shown.

4. I have carefully considered the submissions from both sides and perused the records. On the outset, it is noticed that the demand has been raised based on audit objection. It is not followed by recording of any statement to bring out the mensrea, if any, involved. However, the appellant is not disputing the serviced tax liability. Only prayer is for setting aside the penalties under section 78 and 77. In this case, the service tax and the interest has been paid prior to passing of the order by the adjudicating authority. In the present case, though the service tax demand is not disputed, the appellants have explained that there was at the most clerical error. On perusal of the records, I do not find any ingredient which can lead to a conclusion of intention to evade service tax. There is also no evidence relied upon which can show intentions to evade the tax. Therefore, there is

scope for reduction of the penalty imposed under section 78 and is accordingly reduced from Rs.55,024/- to Rs.13,756/- (Rupees Thirteen thousand seven hundred and fifty-six only), and the penalty of Rs.1000/- imposed under section 77 is set aside. There is no request for waiver of penalty under section 76.

5. Thus, the appeal is disposed of by upholding the demand of service tax and interest as uncontested and upholding the penalty under section 76 also as uncontested. The penalty under section 77 is set aside. The penalty imposed under section 78 is reduced to 25% of the penalty imposed.

(M. Veeraiyan)
Member(Technical)

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