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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/8 /2007 - CU[DB]

Date 05/08/2010

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

To :
M/S PRABHA TELECOMMUNICATIONS
14/76L, CIVIL LINES, KANPUR.

M/S PRABHA TELECOMMUNICATIONS — Appellant

Vs

C.C.E. KANPUR — Respondent

I am directed to transmit herewith a certified copy of **Final order No. ST/48/ 2010 CU[DB]** dated 27.07.10 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. KANPUR
   117/7, SARVODAYA NAGAR, KANPUR.
   208005
2. Adv. / Consult
   MR.REETESH SINGH,ADV
   423,MC SETALVAD CHAMBERS, SUPREME COURT OF INDIA, NEW DELHI-110001
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. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
10. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
11. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
12. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
13. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No. 2, R.K. Puram,
NEW DELHI

COURT No. II

SERVICE TAX APPEAL NO. 08 OF 2007

[Arising out of Order-in-Appeal No. 276-CE/APPL/KNP/2006 dated 30.06.2006 passed by the Commissioner (Appeals), Customs & Central Excise, Kanpur]

M/s. Prabha Tele Communication — Appellant
None

Versus

CCE, Kanpur — Respondent
Reptd. by Shri Sumit Kumar, SDR

Date of Hearing/decision: 27th July, 2010

Coram: Hon'ble Shri D.N. Panda, Judicial Member
Hon'ble Shri Rakesh Kumar, Technical Member

FINAL ORDER NO. ST/48/10 DATED

Per D.N. Panda:

Learned Counsel Shri K.K. Anand had withdrawn his appearance in this case by an application filed on 21st July, 2010 mentioning that there is no cooperation from his client to get instructions. Therefore, matter was adjourned for hearing for today. Today, no one is present for the appellant.

2. The appellant in this case failed to appear before the learned adjudicating authority to prove his stand. It is also recorded that hearing was granted de novo due to change of adjudicating authority. He came to conclusion that there was a liability of service tax on the appellant for providing telecommunication service as telegraph authority. We find the meaning of such authority from the Indian Telegraph Act, 1985 which was adopted by the Finance Act, 1994. When there was no anomaly in interpretation, the authority proceeded for quantification of demand. There was no specific reply and no evidence was adduced by the appellant to show that service tax was paid. Finding that no service tax was paid to the treasury, adjudication was completed with service tax with other consequences as follows:-

(i) Service Tax amounting to Rs. 2,19,500/- was demanded for the period 98-99 to 99-2000 under Section 73 of the Act.

(ii) Service Tax amounting to Rs. 1,32,500/- was demanded for the period 98-99 to 99-2000 under Section 73 of the Act.

(iii) Payment of interest on delayed payment of Service Tax was ordered.

(iv) Penalty of Rs. 1,46,000/- (Rs. One Lacs Forty Six Thousand Only) upon the party under Section 76 of the Act was imposed.

(v) Penalty of Rs. 1000/- (Rs. One Thousand Only) upon the party under Section 77 of the Act was imposed.

(vi) Penalty of Rs. 7,04,000/- (Rs. Seven Lacs Four Thousand Only) upon the party under Section 78 of the Act was imposed.

(vii) I impose a penalty of Rs. 500/- (Rs. Five Hundred Only) upon the party under Section 75A of the Act.

(viii) I impose a penalty of Rs. 1,76,000/- (Rs. One Lacs Seventy Six Thousand Only) upon the party under Section 79 of the Act was imposed.

While holding as above, the authority also found that the appellant was charging service tax from the customers. Therefore, the charges so collected become recoverable under Section 11D of the Central Excise Act, 1944. Making clear observations in discussion and finding portion of impugned order, the adjudication was completed.

3. When the matter was appealed before the learned appellate authority, the appellant explained that there were less number of clients than the licenced capacity of 300 lines. Due to such circumstances no service tax can be levied on 300 lines.

4. Learned Appellate authority held that the appellant shall fall under first proviso to Section 4 of Indian Telegraph Act, 1885 and shall be liable to pay service tax. The authority also found that taxable service was provided by the appellant. There was no evidence before him to notice that there were less than 300 lines provided by the appellant. Show cause notice alleged that there was suppression of facts and the appellant could not come out with clean hand to place any evidence in support of his claim. The appellant's claim that it has provided less than 300 lines was discarded and providing of 500 lines was upheld. In contradiction, no evidence was adduced to the learned appellate authority about the capacity utilised. The appellants claimed that the records for the subsequent period was burnt and no FIR was filed in that respect. Conduct of the appellant has become questionable before the learned first appellate authority. Zerox of letter from SDE BSNL produced could not come to the rescue of the appellant. When the appellant failed to explain its matter before the appellate authority below and also no instruction are given to its advocate to pursue its case and absence of

appellant before the Tribunal appears to be abuse of process of law. When such a casual approach of the appellant comes to notice we do not consider it proper to keep the matter pending.

5. Absence of the appellant on various occasions is also coming out from the order sheet beginning from 2008 and finding no consciousness of the appellant to prosecute the appeal we dismiss the same when that is devoid of merit ~~—————————~~. We order accordingly.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

RK