(15)

TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

# 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/272 /2007 – SM[BR] AND ST / 238 / 2007-SM[BR]** **Date 19/10/2011**

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

To :
**JAYPEE BELA PLANT**
**REGIONAL MARKETING OFFICE 45/21, MUIR ROAD, ALLAHABAD(UP)**
**JAYPEE BELA PLANT** Appellant

Vs

**C.C.E ALLAHABAD** Respondent

I am directed to transmit herewith a certified copy of **Final order No.719 – 720 /2011-SM[BR]** dated 6.9.2011 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 ALLAHABAD**
38,M.G.MARG, CIVIL LINES,
ALLAHABAD

2. Adv. / Consult
**MR.V. LAXMIKUMARAN**
B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

**[2] JAYPEE BELA PLANT**
**REGIONAL MARKETING OFFICE**
**45/21, MUIR ROAD, ALLAHABAD(UP)**

Assistant Registrar
(SM Appeal Branch)

# IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing:06.09.11
Date of decision:06.09.11

Service Tax Appeal No.272 of 2007-SM

[Arising out of common Order-in-Appeal No.7/ST/ALLD/2007 dated 19.02.2007 passed by the Commissioner of Central Excise, Allahabad (U.P.)].

M/s. Jaypee Bela Plant — Appellant

Vs.

CCE, Allahabad — Respondent

Service Tax Appeal No.238 of 2007-SM

CCE, Allahabad — Appellant

Vs.

M/s. Jaypee Bela Plant — Respondent

For approval and signature:

**Hon'ble Shri Rakesh Kumar, Member (Technical)**

---

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.

2. Whether it should 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?

---

Appearance: Rep. by Shri Hemant Bajaj, Advocate for the appellants.
Rep. by Shri B.L. Soni, DR for the respondent.

CORAM: **Hon'ble Shri Rakesh Kumar, Member (Technical)**

Final Order No. 719 - 720/2011 SM(BR) /Dated:6.9.2011

**Per Rakesh Kumar**

M/s. Jaypee Bela Plant (hereinafter referred to as "the appellant) had availed the services of Goods Transport Agency during 1997-98. But at that time, they did not discharge the service tax liability. Subsequently, by retrospective amendment made to the relevant provisions of Finance Act, 1994 by the Finance Act of 2000 & 2003, the appellant became liable for payment of service tax during 1997-98 period as the service recipient. However, they neither paid the service tax nor filed the return under Section 70, as there was no provision for them to file the return. Subsequently, by Section 158 of Finance Act, 2003, Section 71 A was introduced, which provided that notwithstanding anything contained in Sections 69 and 70, the provisions thereof shall not apply to a person referred to in proviso to Sections 68 for filing of Return in respect of service tax for the respective period and the service specified therein and such person shall furnish return to the Central Excise Officer within six months from the date on which the Finance Bill, 2003 receives the assent of the President in the prescribed manner on the basis of the self assessment of the service tax and the provisions of Section 71 shall apply accordingly.

However, even after introduction of Section 71 A, the appellant did not pay the service tax and did not file the required return within the prescribed period. It is in view of this that a show cause notice dated 4.11.2003 was issued to the appellant under Section 73 of the Finance Act, 1993 for recovery of non-paid service tax amounting to Rs.6,98,286/- on the value of GTA services received by them during 1997-98. The show cause notice also sought levy of interest on the non-paid service tax and also imposition of penalty under Section 76 and 77 on them. The show cause notice was adjudicated by the Addl. Commissioner vide order-in-original dated 5.9.06 by which the service tax demand of Rs.6,98,286/- was confirmed against the appellant along with interest under Section 73 & 75 of the Finance Act, 1994 and besides this, penalty was imposed on them under Section 76 of the Act. Against this order of the Addl. Commissioner, the appellant filed an appeal before the Commissioner (Appeals) and the Commissioner (Appeals) vide Order-in-Appeal dated 19.02.2007 while upholding the service tax demand along with interest, reduced the penalty to Rs.2 Lakh. Against this order of the Commissioner (Appeals) while the appellant filed appeal challenging upholding of the demand of service tax along with interest and imposition of penalty, the Revenue has filed the appeal against the same order for enhancement of penalty, as according to the department, reduction of penalty to Rs.2 Lakh was not justified.

2. Heard both the sides.

3. Shri Hemant Bajaj, Advocate, ld. Counsel for the appellant pleaded that show cause notice dated 4.11.2003 had been issued subsequent to the introduction of Section 71 A by Finance Act, 2003, that though the show cause notice for demand of service tax along with interest has been issued by invoking Section 73, as held by the Tribunal in the case of **L.H. Sugar Factories Ltd. Vs. CCE, Meerut-II reported in 2006 (3) STR 230 (Tribunal-Delhi),** Section 73, as it stood at that time, did not cover the assessee, who were required to file return under Section 71A and hence, the show cause notice was invalid, that the Tribunal's judgement in the case of **L.H. Sugar Factories Ltd. Vs. CCE (supra) has been upheld by the Hon'ble Supreme Court vide judgement reported in 2005 (187) ELT 5 (SC),** that though Section 73 was amended w.e.f. 10.09.2004, but no revised show cause notice was issued after amendment of Section 73, that in a similar situation in the appellant's own case, the **Tribunal vide Final Order No.ST/46-47 of 2011 ated 17.02.2011** has set aside the demand and that in view of this, the impugned order is not correct. He also pleaded that since the service tax demand itself is not sustainable, there is no question of imposition of penalty on them and hence, there is no merit in the Revenue's appeal for enhancement of penalty.

4. Shri B.L. Soni, the learned Sr. Departmental Representative, defended the impugned order by reiterating the findings of the Commissioner (Appeals) and pleaded that the intention of introducing

Section 71 A was to recover service tax from the assessee, who during the period 1997-98 had received the services of GTA, that newly introduced Section 71 A required the appellant to pay the service tax and furnish the return within a period of six months from the day on which the Finance Bill, 2003 receives the assent of the President, in the prescribed manner on the basis of the self assessment of the service tax and the provisions of Section 71 shall apply accordingly and since the appellant have not complied with the provisions of Section 71 A, the department is justified in issuing the show cause notice for recovery of the service tax demand which they were liable to pay but had not paid.

5. I have carefully considered the submissions from both the sides and perused the records. The show cause notice dated 4.11.2003 had been issued to the appellant subsequent to the introduction of Section 71 A which required the appellant to ascertain their service tax liability on self-assessment basis, pay the service tax and file one time return within a period of six months from the date on which the Finance Bill 2003 receives the assent of the precedent. But in spite of this provision, the appellant neither paid the service tax nor filed the Return as required under Section 71 A. However, though Section 71 A had been introduced by Section 158 of Finance Act, 2003, Section 73 was not amended and as observed by the Tribunal in the judgement in the case of **L.H. Sugar Factories Ltd.** (supra), Section 73 regarding recovery of service tax not paid or short paid, did not

cover the case where a person was required to file return under Section 71 A. Section 73 was amended w.e.f. 10.09.2004 but no show cause notice under amended Section 73 was issued. Since the issue involved in this case stands decided against the department by the Tribunal in the case in the case of **L.H. Sugar Factories Ltd.** (supra) and this judgement has been upheld by the Hon'ble Supreme Court vide judgement reported in **2005 (187) ELT 5 (SC)**, the impugned order upholding the service tax demand along with interest and upholding the imposition of penalty is not sustainable. The same is, therefore, set aside and the Appeal No.ST/272 of 2007-SM filed by the appellant is allowed. Since the service tax demand itself is not sustainable, the Revenue's appeal No.ST/238 of 2007-SM (BR) would not survive and is dismissed.

( Rakesh Kumar )
Member (Technical)

Ckp.