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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. E/1111/2009 – SM[BR]

Date 14/12/2010

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

To :
M/S PRAVEEN JAIN & CO. PVT. LTD.

ARUNANCHAL BUILDING, 19, BARAKHAMBA
ROAD, NEW DELHI 110001.

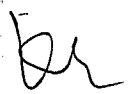
M/S PRAVEEN JAIN & CO. PVT. LTD.

Appellant

Vs
Respondent

C.S.T. DELHI

I am directed to transmit herewith a certified copy of Final order No. 1406 / 2010-SM[BR] dated 1.12.2010
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

C.S.T. DELHI

17-B, I.P. ESTATE, IAEA HOUSE, NEW DELHI.

2. Adv. / Consult

MR.ATUL KUMAR GUPTA, CA (APRA & ASSO.)

APRA & ASSOCIATES, 259, AGGARWAL SHOPPING CENTRE, CD-BLOCK, PITAM PURA, DELHI-88

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 Publications 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

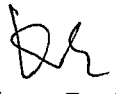
11 Easy Service Tax Online Dot Com Pvt.Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15

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

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15 Guard file


Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
Single Member Bench

Excise Appeal No.1111 of 2009-SM

(Arising out of Order-in-Appeal No.02/ST/DLH/2009 dated 27.1.09
passed by the CCE(A), New Delhi)

Date of Hearing/Decision: 01.12.2010

For approval and signature:

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

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

M/s.Praveen Jain & Co. Pvt.Ltd.

Appellant

Vs.

CST, Delhi

Respondent

Present for the Appellant : Shri Atul Kumar Gupta, Advocate
Present for the Respondent: Shri Anil Khanna, SDR

Coram:

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

final ORDER No. 1406 / 2010 SM (Bx)

PER: M.VEERAIYAN

This is an appeal against order of the Commissioner (Appeals) No.02/ST/DLH/2009 dated 27.1.09 by which the order of the original authority confirming the demand of duty by denying service tax credit amounting to Rs.2,51,699/- and imposing penalty of Rs.10,000/- was upheld.

2. Heard both sides.

3. The relevant facts of the case, in brief, are that appellant received input service during the period October, 04 and November, 04 and based on the invoices received during the said months, taken credit of service tax indicated in those invoices and utilized the same. However, the appellant paid only later the service charges and service tax mentioned in those invoices during February to May, 05. A show cause notice was issued alleging that the recipient of service could not take credit unless they made payment of service charges and service tax to the service provider and therefore, the credit taken was irregular. The original authority confirmed the demand and imposed penalty which stands upheld by the Commissioner (Appeals).

4. Learned Chartered Accountant for the appellant submits that the credit facility for input service was introduced on 10.9.2004 and the assessee was not familiar with the law and as in the case of receipt of inputs, they have taken the credit of service tax based on the invoices for input services. It was mistake as they are eligible to take credit only after the payment was made by them. They have received the services from the registered service provider. They have made subsequently the payments. Therefore, denial of credit and demand of duty is not justified. He relies on the decision of the Tribunal in the case of Raj Khosla & Co. Pvt.Ltd. vs. CST, New Delhi reported 2088 (07) LCX0297 wherein on subsequent regularization of the deficiency of the documents, the mistake has been condoned and the credit has been made available.

5. Learned SDR drawing my attention to the provision of Rule 9 (3) of Cenvat Credit Rules, 2004 during the relevant period submits that as recipient, they were required to take precautions as envisaged therein before taking credit. It is clear violation of legal

provision of Rule 9 as they have taken credit without paying service charge and service tax to the service provider. As initially taking of credit itself is not legal, the payment of service charges and service tax subsequently cannot rectify the mistake and the credit taken has been rightly denied and duty demanded and penalty has imposed.

6. I have carefully considered the submissions from both sides and perused the records. There are some basic differences in conditions relating to taking credit in respect of inputs and taking ^{credits in} in respect of input service. The payment of price and excise duty to the supplier of inputs are not pre-conditions for taking credit. The requirement is that supplier has genuinely issued invoices with relevant particulars and in such cases the recipient were entitled to take credit immediately on receipt of inputs. The payment of duty on the inputs will be monitored by the officers in charge of the factory of supplier of inputs.

7. In the case of services, the situation is slightly different. The payment of service tax by the service provider is linked to his receiving the service charges from the recipient of services. Therefore, as a corollary, the condition that the recipients are not entitled to take credit till they make payment of service charges and service tax has been prescribed.

8. In the present case, the appellants undisputedly have taken the credit based on invoices from the service provider and without making payment of service charges and service tax. The order of the original authority clearly records that, after some delay, the appellants have paid the service charges and service tax to the service provider. There is no allegation or finding that the provider of service from whom the appellants have received the services are not genuine or that they are not registered with the excise department.

Therefore, I hold that on subsequent payment of service charges and service tax to the provider of service, the appellants shall be eligible for the credit. During the interim period i.e. between the date of taking credit and the date of payment to the service provider, the appellants have enjoyed the monetary benefit and therefore the demand of interest for this period as held by the original authority deserves to be upheld. Further, the penalty of Rs.10,000/- imposed on the appellants deserves to be upheld.

9. In view of the above, the appeal is disposed as follows:-

- (a) Denial of credit is set aside after taking into account that subsequently the appellants have paid service charges and service tax to the provider of service.
- (b) Interest for the period they have wrongly availed and utilized the credit is upheld.
- (c) Penalty of Rs.10,000/- imposed on the appellants is also upheld.

(Dictated and Pronounced in the open court)

(M.VEERAIYAN)
MEMBER (TECHNICAL)

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